

California Regional Water Quality Control Board
Santa Ana Region

April 19, 2001

ITEM: 21

SUBJECT: Administrative Civil Liability Complaint No. 01-50, Patti Lekkerkerker

SUMMARY

Patti Lekkerkerker is alleged to have violated California Water Code (CWC) Section 13376, which prohibits the discharge of pollutants to the navigable waters of the United States, except as authorized by waste discharge requirements. Patti Lekkerkerker is the owner of property formerly used as an operating dairy, at 8146 Chino Avenue, Ontario. On March 23, 2001, the Executive Officer issued Administrative Civil Liability Complaint (ACLC) No. 01-50 to Patti Lekkerkerker. The maximum amount of liability that the Board could assess administratively under Section 13385(c) for the discharges that were observed is \$20,000, plus \$10 per gallon for each gallon in excess of 1,000 gallons that were discharged. The assessment proposed in ACLC No. 01-50 is \$10,000. The matter before the Board is whether to affirm, reject, or modify this assessment.

BACKGROUND

The Board began issuing individual waste discharge requirements to all dairy facilities in the Region in 1972. In 1994, the Board adopted a general NPDES permit for concentrated animal feeding operations (Order No. 94-7). Order No. 94-7 was adopted to streamline the permitting process for dairies, and to incorporate recent federal and state storm water regulations. Order No. 94-7 expired on March 1, 1999. Therefore, on August 20, 1999, the Board adopted General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairies and Related Facilities) within the Santa Ana Region, NPDES No. CAG018001 (Order No. 99-11). Dairies previously enrolled under Order No. 94-7 were automatically enrolled in Order No. 99-11. Currently, there are approximately 300 dairy and related facilities in the Santa Ana Region.

Dairies generate both solid and liquid wastes. Manure is deposited in the corrals, where it accounts for about 90% of the manure generated by a dairy operation. The corrals are generally cleaned twice each year in order to maintain a healthy environment for the animals. All manure generated at dairies is removed and taken to composting operations or applied to the ground for agricultural use as a fertilizer, both within, and outside, the Region.

Liquid wastes consist of wash water that is generated at the milk barn and storm water runoff from manured areas. Milking cows are washed, before being milked, two or three times a day. Although the amount of wash water that is generated varies from dairy to dairy, a minimum of 50 gallons of water per day is usually generated for each milking cow. For example, a typical dairy of 800 milking cows will usually generate at least 40,000 gallons of wash water per day. Because a milking cow will spend approximately

10% of its day in the milk barn, the wash water will contain approximately 10% of the manure produced by a milking cow. Storm water runoff from manured areas includes runoff from corrals, stockpile areas, and disposal fields. Order No. 99-11 requires that all storm water runoff from manured areas be contained on property owned or controlled by the dairy. Storm water runoff from manured areas and dairy wash water are discharged to ponds or applied to fields for disposal by evaporation and percolation.

Unfortunately, due in some part to the relatively smaller land area of many dairies and the high concentration of dairies and dairy animals in the Chino Basin, discharges of wastewater from dairies occasionally occur during periods of rainfall. Sometimes, these discharges occur as a result of circumstances beyond the control of the dairy operator. Most discharges occur from containment structures as a result of burrowing animals (rodent holes). The rodent holes are usually not apparent until the facility's containment structures begin storing increasing amounts of wastewater during winter rains. Some dairies are also affected by the lack of flood control infrastructure in the Chino dairy area. Storm water from streets and drainage ditches can enter some facilities, resulting in flooding of wastewater ponds and disposal fields. Much of this storm water originates from developed areas to the north, and cannot be diverted by the dairies. The flooding that occurs sometimes creates a "domino effect" as dikes are broken or overtopped and dairies discharge onto adjacent, downgradient dairies, and overwhelm their neighbor's containment capacity, causing additional discharges. Dairies are not permitted to discharge wastewater to waters of the United States, except under certain conditions when a 25-year, 24-hour storm occurs. However, Board staff takes certain circumstances into consideration, such as those noted above, before recommending enforcement actions for dairy wastewater discharges that do occur. Enforcement actions are generally recommended when discharges occur due to negligence, failure to implement reasonable actions to prevent the discharges, or as a result of deliberate actions.

FINDINGS

Ms. Lekkerkerker is the owner of property at 8146 Chino Avenue, located at the northeast corner of Grove Avenue and Chino Avenue. Dairy operations were formerly conducted at this site. However, in early 1999, the most recent dairy operation vacated the property, and there are no longer any dairy animals at the site. There are currently no waste discharge requirements in effect for activities at this site.

On February 12, 2001, a State holiday, Board staff received two voice mail messages, one from the San Bernardino County Flood Control District and one from the City of Ontario. The messages reported the discharge of manure commingled with storm water runoff from the corner of Grove Avenue and Chino Avenue.

On February 13, 2001, Board staff conducted an inspection of the property and observed that manure commingled with storm water runoff was being discharged from the southwest corner of the Lekkerkerker property onto Grove Avenue. The discharge flowed south on Grove Avenue to drainage courses that are tributary to the Santa Ana River, a water of the United States. The discharge was observed to be flowing from the corral area, at an estimated rate of 250 gallons per minute (gpm). The discharge was occurring through an eroded containment dike. During this inspection, a significant

amount of manure was observed in the corrals. Water was pooled in the southwest portion of the corral at a depth of approximately 3 feet.

On February 14 and 15, 2001, Board staff left telephone messages with Ms. Lekkerkerker, informing her of the discharge. On February 15, Ms. Lekkerkerker telephoned Board staff and stated that she intended to repair the dike right away in order to stop the discharge. On February 15, 2001, Board staff inspected the property and observed that a new dike, consisting of loose dirt and manure, had been constructed inside the original dike, and that the discharge had been stopped. During a subsequent inspection by Board staff on March 4, 2001, it was observed that a berm approximately 80 feet long and 3 feet high had been constructed.

It does not appear that storm water originating outside of the facility was a factor in these discharges. The north side of the facility is protected by a low berm ranging from 1 up to 3 feet in height. There is also a series of wastewater containment ponds located along the north side of the property that would have contained storm water if any had entered the facility. In addition, there is a feed alley that bisects the facility from east to west, with stanchions on the south side. The base of these stanchions is a raised concrete curb that can act as a dike to protect the corral to the south. On the east side of the facility, there is a heifer ranch that does not appear to contribute any storm water runoff to Ms. Lekkerkerker's property.

Based upon precipitation data from several recording stations in the Chino area, it appears that at no time did the Chino area receive sufficient rainfall to equal or exceed a 25-year, 24-hour storm event (about 4.5 inches). Rainfall in February 2001 occurred in three storms that each lasted from 3 to 6 days. The storm that occurred during the four-day period from February 10 to February 14 resulted in about 4.1 inches of total rain, with the highest average 24-hour rainfall of about 2.4 inches occurring on February 12. About 1.0 inch of rain occurred on February 13. A much smaller storm lasting from February 18 to February 20 delivered about 0.4 inches. The third storm event from February 23 to February 28 delivered about 2.7 inches of total rain over the 5 days, with the highest average 24-hour rainfall being about 0.9 inches.

Prior to February 12, the Chino area had received about 5.8 inches of rain for the season, almost all of which occurred during the month of January. The storm that began on February 10 was preceded by approximately 2 weeks of dry weather, and prior to January there had been no appreciable rain since October.

DISCUSSION

Section 13385 (e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors are discussed below:

1. Nature, Circumstances, Extent and Gravity of the Violation

The discharges noted above were in the violation of CWC Section 13376. Section 13376 of the CWC prohibits the discharge of pollutants to waters of the United States, except as authorized by waste discharge requirements. The discharge of pollutants noted above was not authorized by waste discharge requirements. Section 13385 (c) of the CWC provides that the Board may impose administrative civil liability for violation of

Section 13376 in an amount that shall not exceed ten thousand dollars (\$10,000) for each day in which the violation occurs, plus \$10 per gallon for each gallon in excess of 1,000 gallons that were discharged. Therefore, the maximum amount of liability that the Board could assess administratively under Section 13385(c) for the discharges that were observed on February 12 and 13 is \$20,000, plus \$2500 per minute (250 gpm x \$10 per gallon) for the duration of the discharge. The total duration of the discharge is unknown.

The discharge occurred for at least two days, and was estimated to be occurring at a rate of about 250 gpm when observed by Board staff. Therefore, the volume of the discharge was significant. The discharge was tributary to Reach 3 of the Santa Ana River. The beneficial uses of Reach 3 of the Santa Ana River include, in part, water contact recreation, non-contact water recreation, groundwater recharge and warm freshwater habitat. Municipal wastewater that is discharged to Reach 3 of the Santa Ana River requires a high level of treatment to render the wastewater essentially free of organic matter and pathogens. Storm water runoff from corrals contains pollutants, including, in part, pathogens, nutrients (nitrogen and phosphorus), chemical oxygen demand, high turbidity, ammonia, and dissolved solids (salts). The pollutants in dairy wastewater can significantly impact the beneficial uses of the Santa Ana River and groundwater in Orange County.

The wastewater discharges observed on February 12 and 13, 2001 were a result of the long-term accumulation of manure on the property and inadequate containment structures. These discharges could have been prevented by either removing the manure from the property, pumping the wastewater from the southwest corner of the facility to the northeast area of the property, or building an adequate, structurally sound berm along the west and south property boundaries adjacent to Grove Avenue and Chino Avenue.

2. Ability to Pay the Proposed Assessment

Board staff has no information to indicate that Ms. Lekkerkerker would not be able to pay the proposed assessed amount of \$10,000.

3. Any Prior History of Violation

Most recently, from early 1993 until early 1999, this 12-acre parcel of land was leased to Augustine Simoes for the operation of Gus Simoes Dairy No. 2. During Mr. Simoes' tenancy as a dairy operator, a history of chronic wastewater discharges and excessive manure storage conditions existed at this facility. Discharges that are documented in the Board's file occurred in January 1995, February 1997, January 1998, and April 1998. In most instances, the discharges were due to overtopping or erosion of the facility's southwest berm along the northeast corner of Grove Avenue and Chino Avenue.

On January 15 and 16, 1998, Board staff spoke with Ms. Lekkerkerker regarding Gus Simoes' chronic wastewater discharges and the large amount of manure build-up along Grove Avenue. Ms. Lekkerkerker was aware of the wastewater discharge problems and the excessive manure storage at the facility. Ms. Lekkerkerker stated that she would encourage her tenant, through her attorney, to prevent wastewater discharges and to reduce the amount of manure stored at the facility. On January 16, 1998, the Board received a copy of a letter dated January 15, 1998, sent to Mr. Simoes by Ms. Lekkerkerker's attorney, advising Mr. Simoes to comply with the Regional Board's

regulations. Mr. Simoes subsequently vacated the site in early 1999. Later in 1999, the manure piles were removed. However, a thick layer (3-5 inches) of manure remained in the corral. It is staff's understanding that Ms. Lekkerkerker did not lease the property to another dairy operation because of her knowledge of the wastewater problems associated with the site.

4. Degree of Culpability

The manure that is present on the property is believed to be manure that was left on the property by the dairy operator that formerly leased the property, Mr. Simoes. However, as the owner of the property, Ms. Lekkerkerker is culpable for the discharges observed on February 12 and 13, 2001. Board staff believes that Ms. Lekkerkerker was well aware of the manure that was present at the facility and the lack of adequate structures to prevent storm water runoff from being discharged from the corral. Board staff believes that Ms. Lekkerkerker had the ability and the means, and as the owner of the property, the responsibility, to take corrective action to prevent these discharges.

5. Economic Benefit or Savings, if any, Resulting from the Violation

Ms. Lekkerkerker derived an undetermined economic benefit from the violation by failing to remove the manure from the property, pumping the wastewater from the southwest corner of the facility to the northeast area of the property, or adequately constructing and maintaining berms to contain storm water runoff on the property. Managing wastewater, constructing and maintaining ponds and berms, and cleaning and hauling manure from corrals, are labor and material resource intensive. CWC Section 13385(e) states "At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation." The proposed administrative civil liability is likely at a level that recovers the economic benefits that were derived by failing to take appropriate actions to prevent the discharge.

Based on consideration of the above factors, ACLC No. 01-50 proposed that administrative civil liability be imposed by the Board in the amount of \$10,000.

RECOMMENDATION

Staff recommends that the Board affirm the assessment proposed in ACLC No. 01-50. Further, staff recommends that the Board direct the Executive Officer to take appropriate steps to collect the assessment in the event that Patti Lekkerkerker fails to pay this assessment in a timely manner.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

IN THE MATTER OF:

**Patti Lekkerkerker
8146 Chino Avenue
Chino, CA 91710**

**) COMPLAINT No. 01-50
)
) FOR
) ADMINISTRATIVE CIVIL LIABILITY**

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Ms. Patti Lekkerkerker is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose civil liability pursuant to Section 13385 of the California Water Code (Water Code).
2. A hearing concerning this complaint will be held before the Board within 60 days of the date of issuance of this complaint, unless Ms. Lekkerkerker waives the right to a hearing. Waiver procedures are specified on page 3 of the complaint. If the hearing in this matter is not waived, it will be held during the Board's regular meeting on April 19, 2001 at the Orange County Water District, 10500 Ellis Avenue, Fountain Valley, CA. The meeting begins at 9:00 a.m. You or your representative will have an opportunity to appear and be heard and to contest the allegations in this complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.
3. If the April 19, 2001 hearing is held, the Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. On February 12, 2001, Ms. Patti Lekkerkerker is alleged to have discharged pollutants (storm water runoff containing manure) to a location that is tributary to navigable waters of the United States, in violation of Water Code Section 13376. Section 13385(a)(1) of the Water Code specifies that any person who violates Section 13376 shall be liable civilly in accordance with Section 13385.

5. This complaint is based on the following facts:

- A. Ms. Patti Lekkerkerker owns approximately 11 acres of property located at 8146 Chino Avenue, Ontario. This property is located on the northeast corner of Chino Avenue and Grove Avenue. Two tenants that maintain about 30 horses and 12 ostriches at the site currently lease the property. Previously, this property was leased to Augustine Simoes who operated a dairy at the site until January 1999 when he vacated the property.
- B. On February 12, 2001, a State holiday, Board staff received a voice mail message from the San Bernardino County Flood Control District reporting the discharge of animal waste (manure) commingled with storm water runoff from property located at the corner of Chino Avenue and Grove Avenue, Ontario. A second voice mail message reporting the discharge was also received from the City of Ontario that day.
- C. On February 13, 2001, Board staff conducted an inspection of the property and observed that manure commingled with storm water runoff was being discharged from the southwest corner of the property onto Grove Avenue. The discharge was observed to be flowing from an area formerly used as a corral, at a rate of approximately 250 gallons per minute. The discharge was occurring through a break in a containment dike. Runoff from dairy corrals contains pollutants, including, in part, pathogens, nutrients (nitrogen and phosphorus), and dissolved solids (salts). The discharge flowed south on Grove Avenue, which drains into a local drainage channel, which is a tributary to the Santa Ana River, a navigable water of the United States.
- D. During the February 13, 2001, inspection, Board staff also observed that a significant amount of cow manure was present in the corral. Water was pooled in the corral at a depth of up to approximately 3 feet.
- E. On February 13 and 14, Board staff attempted to contact Ms. Lekkerkerker by telephone to inform her of the discharge. On February 14, Ms. Lekkerkerker left a voice mail message with Board staff. On February 15, Ms. Lekkerkerker called again and spoke with Board staff. Ms. Lekkerkerker indicated that she intended to repair the dike right away in order to stop the discharge.
- F. On February 15, 2001, Board staff inspected the property and observed that a new dike consisting of loose dirt and manure had been constructed inside the original dike, and that the discharge had been stopped. The duration of the discharge was estimated to be a minimum of two days (February 12 and 13).

6. Section 13376 of the Water Code prohibits the discharge of pollutants to the navigable waters of the United States, except as authorized by waste discharge requirements. The discharge of pollutants noted above was not authorized by waste discharge requirements. Section 13385 (c)(1) of the Water Code provides that the Board may administratively impose civil liability for violation of Section 13376 in an amount that shall not exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.
7. The maximum amount of liability, which the Board could assess administratively under Section 13385 (c)(1) for the discharge that was observed on February 12 and February 13, is \$20,000.
8. The Executive Officer proposes that administrative civil liability be imposed by the Board in the amount of \$10,000.

WAIVER OF THE HEARING

You may waive your right to a hearing. If you waive your right to a hearing, please sign the attached waiver and return it together with a check or money order made payable to the State Water Resources Control Board in the amount of \$10,000 (the amount of civil liability proposed in paragraph 8 above). Send the check and waiver to:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339

If you have any questions regarding this complaint, please contact Gerard J. Thibeault at (909) 782-3284, Stephen D. Mayville at (909) 782-4992, or contact the Regional Board's staff counsel, Ted Cobb, at (916) 657-0406.

3-23-01

Date



Gerard J. Thibeault
Executive Officer